

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW MEXICO**

WAYNE STEVENS,

Plaintiff,

vs.

No. CIV 98-0396 BB/LCS

JAMES WALTHALL and FREED  
TRANSPORT, INC., a Missouri Corporation,

Defendants.

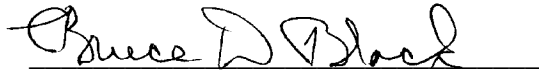
**MEMORANDUM OPINION AND ORDER**

This matter comes before the Court on Defendants' motion for partial summary judgment, attempting to remove the issue of punitive damages from the upcoming trial (Doc. 42). Initially the Court notes the trial in this case will be a bench trial, rather than a jury trial. The Court also notes the motion for summary judgment relates primarily to the sufficiency of the evidence to sustain punitive damages, rather than legal questions. Finally, and most importantly, the Court notes the factual issues relevant to the punitive-damages question are closely intertwined with the factual issues relevant to the liability issue. The liability claim will have to be tried regardless of whether the punitive-damages question is removed from the trial. *See Powell v. Radkins*, 506 F.2d 763, 765 (5th Cir. 1975) (court, in its discretion shaping case for trial, may deny summary judgment as to portions of a case that are ripe therefor, for the purpose of achieving a more orderly or expeditious handling of the entire litigation); *Berman v. Royal Knitting Mills, Inc.*, 86 F.R.D. 124, 126 (S.D.N.Y. 1980) (even though one claim may be capable of summary disposition, where it is inextricably interwoven with other claims which will be determined by the trier of fact, the action is better left fully intact). For these reasons, the motion for partial summary judgment, which is more properly termed a motion

for partial summary adjudication, should be denied.

**IT IS THEREFORE ORDERED** that Defendants' motion for summary judgment be, and hereby is, DENIED.

Dated this 22<sup>nd</sup> day of June, 1999.

  
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BRUCE D. BLACK  
UNITED STATES DISTRICT JUDGE

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